

# **North Smithfield Zoning Board of Review**

## **Meeting Minutes of May 15, 2007**

**The North Smithfield Zoning Board of Review met on Tuesday, May 15, 2007, at 7:00 PM at Kendall Dean School, 83 Greene Street, Slatersville, RI 02876.**

**Call to Order: The Chair called the meeting to order when the court stenographer arrived at 7:10 pm.**

### **I. Call of the Roll**

**Chair Stephen Kearns called the roll of the members. Present: Stephen Kearns, Vincent Marcantonio, William Juhr, Steven Scarpelli, Guy Denizard, Mario DiNunzio, and Dean Naylor. Also present were the Assistant Solicitor, Robert Rossi, Esq.; Robert Benoit, Building and Zoning Official; and a court stenographer from Allied Court Reporters.**

**The Chair reviewed procedures of the board for all present.**

### **II. Approval of Minutes—April 3 and 10, 2007**

**Mr. Marcantonio made a motion to approve the minutes of the April 3, 2007 meeting. Mr. Scarpelli seconded the motion, with all members voting in favor.**

**Mr. Marcantonio made a motion to approve the minutes of the April**

**10, 2007 meeting. Mr. Scarpelli seconded the motion, with all members voting in favor.**

**III. Certification of the written decision of the Zoning Board of Review approving the application of Raymond and Carol Church, requesting a dimensional variance from section 5.5, subsection 5.5.1 Building Setbacks. Locus is 52 Main Street, Plat 4, Lot 127.**

**Mr. Marcantonio made a motion to ratify the decision of April 3, 2007 to approve the application of Raymond and Carol Church, requesting a dimensional variance. Mr. Denizard seconded the motion, with all members voting aye. Motion to ratify the decision was passed by a vote of 5-0.**

**IV. Continuation of the application of Daniel Geer and Debra McManus for Omnipoint Communications, Inc., requesting to install a wireless communication facility (cell tower), which requires a Special Use Permit under Section 5.4.7, subsection 19(A) & 19(B), Section 5.6.3.10, subsection 6, and a dimensional variance under Section 5.6.3.10, subsection 7 (A-1). Locus is 260 Pound Hill Road, Plat 9, Lot 150.**

**Attorney Brian Grossman, radio frequency engineer Elijah Luutu, and site acquisition/selection representative Warren Kelleher were present for the applicant. Mr. Grossman informed the Board that since the previous meeting, on March 20, 2007, the applicant had, as**

the Board requested, worked on identifying alternate locations on the applicant's property for the cell tower. He stated that they are still finalizing potential locations and are trying to locate the tower more toward the middle of the property.

Warren Kelleher was sworn in by the court stenographer. Mr. Kelleher stated that he has six years site acquisition experience working for various carriers. He has been involved with numerous site acquisitions located throughout Massachusetts and Rhode Island. He has been qualified as an expert witness in similar applications in Lincoln, Rhode Island. Mr. Grossman asked the Board if they would accept Mr. Kelleher as an expert witness. The Chair asked if Mr. Kelleher had a resume to submit, but he did not have one with him. The Board stated they did not object to Mr. Kelleher testifying as an expert witness. Mr. Kelleher explained the process involved in identifying potential cell tower sites. He searches the area that has been identified as having a significant gap in coverage, reviews the zoning ordinance to see where the use is allowed and drives the area to see if there are any existing sites. If there are no existing sites, he tries to find a suitable location where a tower can be constructed. After conducting site visits and identifying potential sites, he then submits the potential sites to radio frequency engineers for review.

Mr. Kelleher stated that since the March 20 meeting, he had visited the property to try to identify another location for the cell tower. They

have identified 2 alternate sites on the property. Mr. Kelleher pointed out the two sites on the site plan map. One was located in a wooded area toward the center of the property. The other was located on the backside of a knoll, but has a steep drop. Most of that area is wetlands or within the wetlands buffer. The wet area is not ideal. It would not be good for construction of the tower. The other site was similar to the original location. It is at a lower grade, but the tower could possibly be located on the hill. It is covered with trees, but the tower could be constructed there. The Board decided to eliminate the site that is within the wetlands as a potential site for the tower.

The Board asked if Mr. Kelleher could provide information on how far the alternate sites were to the edges of the property and the nearest neighbors. Mr. Kelleher stated that without a new survey being conducted, he could not provide exact numbers, but that at the alternate site, the closest property is also owned by the applicant. Both alternate sites would be further from abutters than the originally proposed site. Mr. Jühr asked if exact numbers could be provided in the future. Mr. Grossman stated that once both the applicant and the Board identified an alternate site, exact numbers will be provided as part of the finish engineering. Omnipoint is hesitant to conduct new surveys and fully engineer alternate sites without having an idea as to whether the alternate sites were agreeable to the Board.

The Chair asked if 150 feet is the minimum height needed to provide the desired coverage. Mr. Luutu responded that this is the case. He

stated that moving the tower to an alternate location on the same property would not affect the coverage, but that lowering the height would affect the coverage. The Chair asked if there would be difficulty accessing the alternate sites. Mr. Kelleher said that the access would be totally different from that of the original site, so plans would have to be finalized. The Chair asked Mr. Grossman if the intent of this meeting was for the applicant to rule out some sites before the final engineering. Mr. Grossman stated that they are trying to get a sense of what sites would be agreeable to the Board. The Chair stated that his understanding is that if the applicant proposes a location that accommodates the Board's requests and is nearly within limits of the setbacks in the ordinance, and the Board denies the application; chances are that the application will go to federal appeals process. Mr. Grossman stated that the 1996 Telecommunications Act does create the right to appeal to a federal court. The Chair stated that the Board is trying to do what is best for the neighbors.

Mr. Marcantonio asked if the applicant would consider locating the tower on Lot 160, which is also owned by the applicant, and appears to be at a higher elevation. Mr. Grossman stated that although Lot 160 is under the same ownership, considering it as a potential site may necessitate starting the application process over. Mr. Rossi also stated that this site should only be considered if all feasible and available options on the property originally stated in this application have been duly explored. If, at a later time, it is necessary to look at Lot 160, he will need to research what is required as far as the

application process is concerned. Mr. Grossman stated that they will look at Lot 160 and if it is best suited for their purposes, they will look into what will be required. He just wanted the Board to be aware of the potential application issues it may present.

Mr. Kelleher stated that there may be access issues in locating a tower on Lot 160. Mr. Marcantonio suggested coming in through the highway. Mr. Kelleher said that there may be a problem with RIDOT allowing them to use the highway as an access, but he will look into it. Mr. Grossman stated that at this point, Omnipoint will probably not be able to fully engineer a site on Lot 160, but he will get the most reasonable estimates possible without fully engineering the site.

The Chair opened the meeting to the public at 7:47 pm.

Aram Jarret, attorney for abutter Richard Dowling, asked Mr. Kelleher about the criteria used for selecting the alternate sites. Mr. Kelleher stated that the principal drive in the site selection is the ranking by the radio frequency engineer; they also look at accessibility, constructability, and recommendation of the landlord.

Paulette Janerio of 10 Gilfillan Road asked about potential wetlands issues and whether RIDEM would be involved in the process. Mr. Grossman stated that the applicant would obtain all necessary permits for construction. The Chair explained to Ms. Janerio that all construction has regulations to follow and RIDEM would be involved

if necessary, depending on the exact location of the tower.

In response to questions about existing structures, Mr. Luutu and Mr. Kelleher displayed plot maps, illustrating potential coverage with the tower located at different structures in the area. These were the same maps reviewed at the March 20 meeting. The only site that would provide similar coverage would be near the Gridcom power lines. However, the existing structures are not high enough and cannot be extended high enough. The maximum extension of the existing poles at this site is 20 feet, but that would still be far short of the necessary height. The only way to locate a tower in this area would be to construct one near the power lines. Mr. Luutu stated that he doesn't know if the power company would allow construction in this area. Mr. Kelleher stated that constructing in this area would place the tower very close to abutters in the northeast of the property (just as close as the original application's tower would be to the abutters to that property). Mr. Kelleher added that the power company would have to approve the construction and that there are a lot of problems associated with constructing in a high voltage area. The voltage and the use of the existing lines regulate what can and cannot be done. He has not seen any projects in which something like this has been constructed.

Mr. DiNunzio asked if they considered locating the cell tower along the highway. Mr. Kelleher said in driving the area, he recalls the terrain to have a severe drop-off in the area considered right of way.

**He stated that there are specific regulations on using the right of way.**

**He will look into whether the tower can be located within the right of way, but far enough off the highway, if there is room enough, and if it will meet the requirements of RIDOT. A tower could only be located in this area if it can be entirely within the right of way. If it's partly located on private property, there will be problems associated with this. He stated that he will revisit the area, but he has visited it many times and as he recalls, there is not enough shoulder in the area because of the drop-off. In response to Mr. Marcantonio's question, Mr. Kelleher also stated that he would investigate whether Lot 160 abuts the highway.**

**Mr. Jarret asked if there are any potential sites in Uxbridge. Mr. Kelleher stated that Uxbridge is not included in the search ring. Mr. Jarret also asked about the smokestack in Slatersville. Mr. Kelleher stated that Omnipoint already has an antenna at that site, but it is too far away to provide the desired coverage. Mr. Dowling asked what the radius of coverage is for a cell tower. Mr. Luutu stated that the radius varies with height and elevation depending on terrain, but is usually approximately 1-1½ miles.**

**Rob Skinner of Old Pound Hill Road asked if there is a plot map available showing coverage at the alternate site on the applicant's property. Mr. Luutu did not have a map with him, but stated that it would be similar coverage to the original proposed site.**



**The Chair asked Mr. Grossman to obtain information on the alternate site on the property, another location on Lot 160, and alternate sites along the highway. He asked specifically on Lot 160 if the applicant could find out if it abuts 146, if it is a feasible location, and if it is possible to access the area from the highway. He also asked for measurements of heights and distances from the property lines on the alternate sites. Mr. Naylor also asked the applicant to find out how feasible it would be to have a lower tower. He asked if they could find out if a lower tower height would result in drastic coverage differences.**

**The Chair stated that the application would be continued to July 10, 2007 at 7:00 pm at Kendall Dean School.**

**Mr. Scarpelli made a motion to adjourn at 8:29 p.m., seconded by Mr. Marcantonio, with all in favor.**

**Respectfully submitted,  
Angela Pugliese, Clerk**